

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions)	
of the Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	
)	

**RBOC PAYPHONE COALITION'S COMMENTS ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

INTRODUCTION AND SUMMARY

The RBOC Payphone Coalition¹ ("the Coalition") files these comments in response to the Further Notice of Proposed Rulemaking seeking comment on whether the Commission should amend its rules to clarify which carrier is responsible for paying per-call compensation on calls routed to switch-based resellers.²

The Coalition respectfully submits that the Commission should maintain the rules it adopted in the *Second Reconsideration Order*.³ Those rules – which require the first interexchange carrier ("IXC") to track coinless payphone-originated calls and to pay compensation for those calls to payphone service providers ("PSPs") – have been in place for

¹ The RBOC Payphone Coalition comprises BellSouth Public Communications, Inc., SBC Communications Inc., and the Verizon telephone companies.

² See Further Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 03-119 (rel. May 28, 2003) ("FNPRM").

³ Second Order on Reconsideration, *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd 8098 (2001) ("Second Reconsideration Order").

more than a year and a half, and represent a significant improvement over the prior system. Just as the Commission predicted, the adoption of the new regulations – known in the industry as the “Tollgate” rule – has significantly reduced PSP industry uncollectibles. The old “SBR-pays” rule gave rise to expensive collection efforts and endless litigation between PSPs, IXC’s, and resellers – litigation that has essentially ended.

Moreover, practical administrative considerations argue strongly in favor of maintaining the current system rather than either returning to the prior, failed system or experimenting with something new. Each change in the Commission’s rules entails significant administrative expense. Because the systems changes and business arrangements required for operation of the Tollgate rule have been fully implemented, any further change will simply impose additional, unnecessary expenses on an industry that already faces significant financial pressure. Furthermore, new rules would undoubtedly sow confusion among the thousands of PSPs and SBRs – many of them small, largely unregulated businesses – that would be affected by any change. Thus, the burden is squarely on those who are unhappy with the Tollgate rule to explain why any alternative arrangement would be so clearly superior as to justify the inevitable expense and disruption to the industry. They cannot meet that burden.

These Comments are presented in four sections, corresponding to the four main questions posed by the Commission. *FNPRM* ¶ 16.

I. The Commission’s original decision to adopt the Tollgate rule was fully justified by PSPs’ experience under the prior regime. In its original *Payphone Orders*, the Commission decided that, when a call is passed to an SBR, the SBR would be responsible for tracking the call

and paying compensation to the PSP. *See First Payphone Reconsideration Order*,⁴ 11 FCC Rcd at 21277, ¶ 92. That rule was fundamentally flawed because it relied upon SBRs to identify *themselves* as responsible for payment of per-call compensation, something that SBRs have no incentive to do. *See Second Reconsideration Order*, 16 FCC Rcd at 8102, ¶ 8. The rule led to significant shortfalls in compensation paid to PSPs, which is directly contrary to Section 276 of the Act.

The *Second Reconsideration Order* was intended to help ameliorate that shortfall. Moreover, the system has proven to be cheaper to administer and far less contentious, reducing the amount that Coalition PSPs have had to pay for collections activities and putting a lid on litigation. Because the per-call rate does not include the cost of such collections expenses, the greater ease of administration itself contributes to ensuring fair compensation for PSPs.

II. Placing responsibility for tracking and paying compensation on IXC's best reflects both the technological capabilities of the network and business realities in the marketplace. A PSP can only determine the identity of the first facilities-based carrier to receive the call from the local exchange carrier ("LEC"). The PSP has no way to determine *whether* a call has been passed to an SBR, much less *which* SBR has received the call. By contrast, IXC's are in a position both to identify calls that are originated by PSPs and to determine which calls are either completed or passed to an SBR for completion, and if passed to an SBR, which SBR. While IXC's may not always be able to determine independently when a call carried by an SBR is completed, IXC's can arrange (and presumably have arranged) to receive that information directly from their SBR customers. Placing the obligation for paying compensation on the IXC

⁴ Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233 (1996) (*First Payphone Reconsideration Order*).

thus allows market mechanisms – rather than administrative fiat enforceable through cumbersome and expensive litigation – to ensure that SBRs are paying appropriate compensation for the payphone-originated calls they carry.

III. The Commission should not relax the existing reporting requirements, designed to assist PSPs in verifying IXCs' compliance with their compensation obligations. More generally, the fact that the Tollgate rule and its associated reporting requirements have been fully implemented and are running relatively smoothly is an extremely powerful argument against making any modifications to the existing rules.

IV. As it has from the start, the Commission should permit carriers to adopt private arrangements to take the place of the regulatory obligations imposed by the Commission, so long as all parties' legitimate interests are taken into account. Because those arrangements affect the rights and obligations of IXCs – not just PSPs and SBRs – the Commission should make clear that any such arrangements would have to be agreed to by all *three* parties, not just the PSP and the SBR.

DISCUSSION

The Commission posed four main questions in its *FNPRM*: first, are PSPs receiving fair compensation when SBRs are involved in routing a payphone originated call; second, which facilities-based carrier in the call path is best situated to track a completed call made from a payphone and to compensate the PSP and seek compensation from other carriers that derive an economic benefit from the call; third, what reporting obligations should be imposed on facilities-based carriers; and, fourth, what types of contractual relationships for tracking and payment of payphone calls should be permitted by the Commission. *FNPRM* ¶¶ 16, 33. We address each of those questions in turn.

I. THE TOLLGATE RULE IS HELPING TO ENSURE FAIR COMPENSATION FOR PSPS

The record in this proceeding leaves no doubt that the original rule – which required SBRs, rather than IXC, to track and pay compensation – resulted in severe shortfalls in compensation for PSPs. A coalition of LEC-affiliated PSPs reported to the Commission that “the amount of compensation received from some of the major [IXCs] has been from 20 to more than 50 percent *less* than the amount that PSPs expected,” and that, “in the case of many smaller carriers, PSPs have yet to receive any compensation, despite collection efforts.” Letter from Michael K. Kellogg to Lawrence Strickling, Chief, Common Carrier Bureau, FCC, CC Docket No. 96-128, at 1 & n.1 (FCC filed Nov. 17, 1998). Independent PSPs reported similar problems, informing the Commission that their trade group “invoiced some 1,200 companies that it identified as carriers. . . . Less than one-third of the carriers even responded to [the] letters. Only 73 paid any compensation.”⁵ As the Commission found in the *Second Reconsideration Order*, under the original rules, “PSPs suffer[ed] shortfalls in compensation when calls are routed from an IXC to” a SBR. 16 FCC Rcd at 8102, ¶ 8. As one manager at SBC Public Communications (“PubComm”) explains:

Before the Tollgate Order became effective, PubComm suffered significant shortfalls in collections of per-call compensation for coinless calls. Under the old compensation regime, 1,200 different parties (including resellers and IXCs) were responsible for paying compensation. PubComm, however, was unable to determine which party or parties carried a particular call; PubComm could determine only which IXC first received the call from the local network. As a result, resellers were responsible for coming forward to pay compensation, even though they knew that PSPs would be unable to determine independently how many calls the reseller received. And facilities-based IXCs likewise knew that PSPs would be unable to determine how many calls the IXC passed on to

⁵ Comments of the American Public Communications Council, CC Docket No. 96-128, at 4-5 (FCC filed May 17, 1999); *see also Second Reconsideration Order*, 16 FCC Rcd at 8102, ¶ 8 n.22.

resellers. In my experience, this “honor system” provided opportunities for non-compliance; indeed, many resellers did not pay compensation at all.

McDowall Decl. ¶ 5.⁶ As the Commission noted in its *FNPRM*, “although on review in the D.C. Circuit some IXCs challenged the remedy the Commission had adopted, no party challenged [the Commission’s] conclusion” that the original rules had “not had the intended effect of ensuring that PSPs receive compensation for each and every completed, coinless payphone call.”

FNPRM ¶ 13 (quoting *Second Reconsideration Order*, 16 FCC Rcd at 8103, ¶ 10).

Nor can any party question that the entire compensation scheme is running much more smoothly than it did under the old rules. See McDowall Decl. ¶¶ 6-7; Brassfield Decl. ¶ 5.⁷ One PSP reports that collections improved by an extraordinary 13.7 percent for the two quarters after the Tollgate rule became effective, compared to the two quarters preceding the rule’s effective date. McDowall Decl. ¶ 7.

Even beyond the improvement in the proportion of money collected, the Tollgate regime helps to ensure fair compensation by reducing the costs associated with collection of per-call compensation. Under the SBR-pays rule, PSPs were forced to file dozens of formal complaints and district court actions to attempt to enforce carriers’ per-call compensation obligations; those actions themselves followed significant collection efforts short of litigation. That litigation and pre-litigation activity cost millions. Yet the per-call compensation rate contains no element for either bad debt or collection expense; the loss simply came out of PSPs’ hides.

⁶ Declaration of Rodger McDowall, Exhibit A to Response of LEC Payphone Provider Intervenor to Petitioners’ Motion for Clarification and Contingent Motion to Stay the Mandate, *Sprint Corp. v. FCC*, No. 01-1266 (D.C. Cir. Filed Mar. 10, 2003) (“McDowell Decl.”) (Exh. 1 hereto).

⁷ Declaration of Greg Brassfield, Exhibit B to Response of LEC Payphone Provider Intervenor to Petitioners’ Motion for Clarification and Contingent Motion to Stay the Mandate, *Sprint Corp. v. FCC*, No. 01-1266 (D.C. Cir. filed Mar. 10, 2003) (“Brassfield Decl.”) (Exh. 2 hereto).

Under the Tollgate regime, PSPs have not filed a single new complaint involving the new rules. Nor is the Coalition aware of any litigation between IXC's and SBRs on the subject. See Petitioners' Consolidated Reply and Response to FCC's and Intervenors' Responses to Petitioners' Motion for Clarification, *Sprint Corp. v. FCC*, No. 01-1266, at 9 n.4 (D.C. Cir. filed Mar. 19, 2003) ("Petitioners' Consolidated Reply") (tacitly conceding that there has been no litigation to date). Moreover, because IXC's are permitted to recover any administrative expense associated with carrying out tracking and payment obligations for their SBR customers, SBRs have a market incentive to make the system work smoothly, rather than to obstruct it as many did in the past. For all these reasons, the new rules have proven far more administratively efficient and less contentious, preserving the resources of the Commission and private parties.

II. THE FIRST FACILITIES-BASED CARRIER IS BEST SITUATED TO TRACK A COMPLETED CALL MADE FROM A PAYPHONE, TO COMPENSATE THE PSP, AND TO SEEK REIMBURSEMENT FROM OTHER CARRIERS THAT DERIVE AN ECONOMIC BENEFIT FROM THE CALL

A. Before the D.C. Circuit, three IXC's challenged the *Second Reconsideration Order*, based on the claim that "first facilities-based carriers are in no better position than PSPs to determine whether compensation is owed" on calls carried by SBRs. Brief of Petitioners, *Sprint Corp. v. FCC*, No. 01-1266, at 20 (D.C. Cir. filed June 7, 2002). But that assertion is incorrect: as the Commission correctly determined in the *Second Reconsideration Order*, "underlying facilities-based carriers, who have a customer relationship with resellers, are in a far better position to track the calls and provide adequate information to PSPs." 16 FCC Rcd at 8105, ¶ 16. Precisely because facilities-based carriers have a contractual relationship with their reseller customers, they are far better situated to enforce their rights than a PSP, which has no contractual relationship, no knowledge of the identity of the responsible carrier, and no leverage in attempting to collect unpaid amounts.

By contrast, it is relatively easy for PSPs to identify the *first* facilities-based carrier to receive a payphone-generated call. The LEC always knows to which facilities-based carrier it routes a call, and it can make that information available on a commercial basis to affiliated and unaffiliated PSPs. *See id.* at 8104, ¶ 12; *see also* Letter from Robert F. Aldrich, APCC, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-128 (FCC filed Nov. 15, 2000); *see also* Reply Comments of the RBOC/GTE/SNET Payphone Coalition, CC Docket No. 96-128, at 10-11 (FCC filed June 1, 1999) (“The CIC associated with a given call is also available to PSPs.”). Because, under the Tollgate rule, the carrier to which the compensable call is routed is also the carrier responsible for paying compensation on that call, the information deficit that crippled the prior regime has been largely resolved.

The only remaining question is whether a particular payphone-originated call routed to the facilities-based IXC is completed to the end user. To the extent that the facilities-based IXC completes the call on its own network, it has direct access to that information. To the extent that it routes the call to an SBR, however, there is no assurance that *either* carrier can *both* (1) identify the call as payphone-generated, and (2) determine whether the call is completed to the called party. For its part, the SBR may be unable to determine whether a call is payphone-generated, either because the IXC does not pass the necessary ANI digits to the SBR, or because the SBR does not have signaling capability to recognize those digits. And, in some circumstances, the IXC may be unable to determine which calls received by the SBR are ultimately completed without additional reporting by the SBR.

There is no indication that these difficulties are insurmountable. Prior comments in this proceeding call into question claims that first-switch IXCs are unable to track calls that are handed off to resellers. The Ad Hoc Resellers Coalition, CommuniGroup of K.C., *et al.*,

Intellicall, IPCA, and Network IP, among others, all testified to SBRs' ability to make call-completion data available to first-switch IXC⁸. Bulletins correctly noted that IXCs and resellers have always had the obligation to track completed calls and should be able, without undue difficulty, to coordinate this tracking function. Comments of Bulletins, CC Docket No. 96-128, at 2-3 (FCC filed Oct. 9, 2001). And Intellicall states that, "together with an underlying carrier," it has "developed the systems and interfaces to accept [Intellicall's] existing call detail format to fulfil[1] its compensation and reporting obligations under the *Second Report and Order*." Intellicall at 3. Other IXCs have made comparable arrangements.

In any event, any *technological* limitation on IXCs' ability to track completed calls independently can be and has been resolved through contractual means. IXCs have used "the power of the contract" to "require SBR[s] . . . to provide accurate data in a specified format as a condition of service." *Id.* at 4. Thus, as the Commission predicted, "underlying facilities-based carriers, who have a customer relationship with resellers, are in a far better position to track the calls and provide adequate information to PSPs to ensure they are compensated for every compensable call." *Second Reconsideration Order*, 16 FCC Rcd at 8105, ¶ 16.

Though IXCs may complain that they have had difficulty obtaining compensation from certain of their SBR customers, there are several reasons to believe both that the scope of any alleged problem is far narrower, and that the harm done to the legitimate interests of the parties is

⁸ Comments of The Ad Hoc Resellers Coalition, CC Docket No. 96-128, at 3 (FCC filed Oct. 9, 2001); Opposition of CommuniGroup of K.C., Inc., *et al.* to Petitions for Reconsideration, Clarification and Declaratory Ruling, CC Docket No. 96-128, at 10 (FCC filed Oct. 9, 2001); Comments of Intellicall Operator Services Inc., CC Docket No. 96-128, at 3 (FCC filed Oct. 5, 2001) ("Intellicall"); Comments of the International Prepaid Communications Association on Petitions for Reconsideration and/or Clarification CC Docket No., 96-128, at 13 (FCC filed Oct. 9, 2001) ("IPCA"); Comments of Network Enhanced Telecom, LLP d/b/a Network IP, CC Docket No. 96-128, at 4 (FCC filed Oct. 9, 2001).

far less significant, than under the prior system. Under the prior regime, while SBRs may have had a *regulatory* obligation to pay compensation, there was no efficient market mechanism for *implementation* of that obligation – a situation that led IXC's and SBRs to shirk their compensation obligations, leaving PSPs holding the bag. Because PSPs typically have no contractual relationship with SBRs (or with IXC's with regard to compensable calls), they have essentially no leverage – other than threats of litigation – in attempting either to arrange an efficient mechanism for payment or to collect amounts due. Moreover, as noted above, PSPs are not compensated at all for such collection activity or bad debt.

By contrast, IXC's and SBRs do have contractual relationships, and IXC's are explicitly authorized under the Tollgate rule to “recover from their reseller customers the expense of payphone per-call compensation and the cost of tracking compensable calls.” *Id.* at 8106, ¶ 18. For this reason, SBRs have ample incentive to cooperate with IXC's to ensure that the tracking and compensation system works as smoothly as possible – otherwise, SBRs bear the cost (unlike under the SBR-pays rule). And IXC's can ensure that they are fully compensated for any administrative costs they incur.

Experience under the Tollgate rule bears out this logic. In their dealings with their SBR customers, some IXC's have (quite reasonably) passed on to their SBR customers the per-call compensation paid to PSPs. They have generally done so by requiring the SBR customer to pay on every call routed to the IXC's networks unless the SBR submits an accounting of which calls it carried that were not completed and therefore not compensable. For example, MCI sent letters to its SBR customers requiring them to submit uncompleted call data in a standard format specified by MCI that enables MCI to integrate the data into its billing systems. If the SBR does not comply, it is required to pay for all calls. Moreover, “[i]n order to facilitate compliance

with” the Tollgate rule, MCI announced that it would be “implementing new payphone surcharge policies for all calls that originate from a payphone that are delivered for completion to” a SBR. See Letter from Dennis Kolb, Vice President, MCI Wholesale Marketing (Dec. 13, 2001).⁹ The initial amount of the surcharge was \$0.26, or nearly 10 percent above the per-call compensation rate set by the Commission. *Id.*

B. Because the arrangements between IXC and SBRs to govern tracking and reimbursement can be worked out through existing contractual relationships and market mechanisms, the Commission should not attempt to dictate in advance any particular tracking or reimbursement mechanism. The Commission has held repeatedly that the long-distance market — including the segment involving provision of wholesale long-distance service to resellers — is sufficiently competitive that rate regulation is unnecessary to prevent IXCs from imposing unjust and unreasonable charges on their customers. In requiring the deregulation and detariffing of all domestic long-distance service, the Commission has held that “it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act.” *Detariffing Order*,¹⁰ 11 FCC Rcd at 20750, ¶ 36. For that reason, the Commission has decided to abandon all rate regulation of non-dominant IXCs, holding that “market forces, . . . the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.” *Id.* Moreover, the Commission

⁹ Exhibit A to Brief for Intervenor American Public Communications Council, Inc., *et al.*, *Sprint Corp. v. FCC*, No. 01-1266, at 1 (D.C. Cir. Filed May 9, 2002) (Exh. 3 hereto).

¹⁰ Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 20730 (1996) (“*Detariffing Order*”).

has relied on market forces specifically to ensure that “facilities-based carriers will . . . provide resellers with service options at reasonable rates.” *Detariffing Reconsideration Order*,¹¹ 12 FCC Rcd at 15054, ¶ 72.

In light of this, the Commission should not establish any regulations to dictate the rates, terms, and conditions that first-switch IXC and SBRs may negotiate for reimbursement of per-call compensation payments. IXC and SBRs can be counted on to negotiate the most efficient arrangements for reimbursement. The Commission has policies in place “barring prohibitions on resale and restrictive eligibility requirements.” *Id.* Likewise, the Commission has indicated that Sections 201 and 202 continue to apply to provision of unregulated interstate common carrier services. *Id.* If a particular SBR believes a particular IXC’s practice runs afoul of the Commission’s rules or the Communications Act, it can file a complaint. But SBRs should also recognize that tracking and payment of compensation creates costs, and first-switch IXC can be expected to pass those costs through to their SBR customers. There is nothing improper in that.

III. THE COMMISSION SHOULD RETAIN CURRENT REPORTING OBLIGATIONS

The Commission has also sought comment on whether it should maintain the reporting obligations established in the *Second Reconsideration Order*. *FNPRM* ¶¶ 33-35. The Coalition is generally satisfied with the current reporting requirements and believes they should be retained in their current form. By requiring IXC to identify “the toll-free and access code numbers for calls that the LEC has routed to the carrier, and the volume of calls for each toll-free and access

¹¹ Order on Reconsideration, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 12 FCC Rcd 15014 (1997) (“*Detariffing Reconsideration Order*”).

code number that each carrier has received from each of that PSP's payphones" (*Second Reconsideration Order*, 16 FCC Rcd at 8106, ¶ 18), the Commission has put in place obligations that have assisted PSPs in verifying that IXC's are complying with their obligations under the Commission's rules.

Moreover, now that the rules have been fully implemented, there can be no serious claim that the reporting requirements are unduly burdensome to maintain. To the extent that the reporting requirements entail data that PSPs do not require, IXC's could presumably have secured PSPs' agreement to modify those reporting obligations through private contract. That they did not bother to do so simply proves that the obligations are not unreasonable.

More generally, the Commission should resist any calls for modifications to the existing Tollgate rule in the absence of clear evidence that there is a significant problem that needs to be addressed. Facilities-based carriers and resellers alike have adopted arrangements to implement the requirements. Notably, in seeking a stay of the Tollgate rule, Sprint informed the D.C. Circuit that developing "new tracking and compensation systems and other necessary arrangements" would "require millions of dollars in new investments and thousands of hours of programming and labor time just to achieve some of the basic functionalities necessary to comply." Motion for a Stay Pending Review, *Sprint Corp. v. FCC*, No. 01-1266, at 19 (D.C. Cir. filed June 12, 2001). Since Sprint is now subject to the current system, these investments have already been made, and presumably been replicated by other facilities-based carriers and resellers. See Brassfield Decl. ¶ 4. To force the entire industry to reprogram their systems yet again in the absence of a compelling need to do so would plainly be inappropriate.

Beyond the expense of implementation, any modification to the existing regime will entail inevitable hiccups in implementation and produce confusion and uncertainty. Even with

the best will in the world, modifying existing requirements would produce administrative headaches for the entire industry. For that reason, the question should not be whether the reporting requirements are ideal; the question should be whether any party seeking a modification of those requirements has made a case that such a change is so desperately needed that the Commission should impose the inevitable costs of implementation on the industry. No party can make such a showing here.

IV. THE COMMISSION SHOULD PERMIT PRIVATE PARTIES TO “CONTRACT AROUND” THE COMMISSION’S RULES

Throughout the payphone proceeding, the Commission has consistently expressed a preference for market mechanisms to govern payphone compensation where possible, and has always permitted parties to contract around the Commission’s default compensation rules. *See, e.g., First Report and Order*,¹² 11 FCC Rcd at 20567, ¶ 49 (“once competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price”); *id.* at 20568, ¶ 51 (compensation rate “may be changed by mutual agreement”). Accordingly, the Commission should impose no restriction on the parties’ ability to modify their tracking and payment obligations by contract. And, among other things, PSPs, IXC’s, and SBRs should be able to enter into contractual arrangements to modify responsibility for tracking and paying compensation.

In opposing the Commission’s motion to stay the mandate in *Sprint Corp. v. FCC*, petitioners argued that they are being frustrated in their attempts to collect payments from SBRs because “some SBRs are claiming they already paid the PSPs directly.” Petitioners’ Consolidated Reply at 8-9. If this has happened, it is the IXC’s own fault: IXC’s can ensure,

¹² Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996) (“*First Report and Order*”).

through their agreements with SBRs, that IXC's are fully informed in advance of any agreement between an SBR and a PSP for direct payment. At the same time, the Coalition believes that IXC's have a legitimate concern that SBRs and PSPs should not be permitted to modify an IXC's regulatory rights and obligations without the IXC's explicit agreement. Under the Commission's rules, IXC's have both an obligation to track and pay compensation *and* a right to reimbursement from their SBR customers. Those rights and obligations cannot be modified without an IXC's consent. Accordingly, the Commission should simply clarify that, while direct contractual arrangements for compensation between SBRs and PSPs are permitted, they cannot be entered into without the consent of the IXC that would otherwise bear responsibility for compensation. Because IXC's support such direct obligations, they presumably will pose no obstacle, and will be able to ensure that all SBR-bound calls for which they would otherwise be responsible are accurately accounted for.

CONCLUSION

The Commission should readopt the rules contained in the *Second Reconsideration Order*.

Respectfully submitted,



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Counsel for the RBOC Payphone Coalition

June 23, 2003

Exhibit 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SPRINT CORPORATION, *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

No. 01-1266 (and
consolidated cases)

DECLARATION OF RODGER MCDOWALL

1. My name is Rodger McDowall, and I am over the age of 18.
2. I am General Manager—Information Systems at SBC Public Communications (“PubComm”), located at 225 West Randolph, Chicago, Illinois 60606. PubComm is the SBC Business Unit providing retail payphone services. As part of my job responsibilities, I am responsible for implementing systems changes that reflect regulatory requirements put in place by the Federal Communications Commission (“FCC”).
3. I have more than 27 years of experience in the telecommunications industry. Even before I assumed the position of General Manager, I implemented changes in PubComm’s systems and other operations required by FCC orders in Docket No. 96-128 (the payphone docket).
4. Currently, FCC rules require interexchange carriers (“IXCs”) to track the number of completed coinless calls that they receive from payphones and to compensate

payphone service providers ("PSPs") for those calls. Such coinless calls include access code calls and 800-number calls. Current rules require the IXC that first receives a payphone-originated call from the local network to track and pay compensation, including for calls that are passed to switch-based resellers. This rule is commonly known in the industry as the "Tollgate Order," and it became effective in November 2001. Before November 2001, facilities-based IXCs were not responsible for paying compensation for calls passed to switch-based resellers; instead, switch-based resellers were responsible for tracking and paying such compensation.

5. Before the Tollgate Order became effective, PubComm suffered significant shortfalls in collections of per-call compensation for coinless calls. Under the old compensation regime, 1,200 different parties (including resellers and IXCs) were responsible for paying compensation. PubComm, however, was unable to determine which party or parties carried a particular call; PubComm could determine only which IXC first received the call from the local network. As a result, resellers were responsible for coming forward to pay compensation, even though they knew that PSPs would be unable to determine independently how many calls the reseller received. And facilities-based IXCs likewise knew that PSPs would be unable to determine how many calls the IXC passed on to resellers. In my experience, this "honor system" provided opportunities for non-compliance; indeed, many resellers did not pay compensation at all.

6. Since the Tollgate Order became effective, the problem of uncollectible compensation has become much more manageable. The number of IXCs responsible for compensating PubComm has fallen by a factor of ten. And because the IXC that first receives the call from the local network is responsible for tracking the number of calls,

reporting those that have been completed, and paying compensation, it is much easier for PubComm to verify that IXC's are complying with their compensation obligations.

7. PubComm's collections, relative to the number of coinless calls generated on its payphones, have improved significantly. Comparing payments received to our expectations (based on the number of calls generated and their holding times), our collections for the two quarters after the Tollgate Order became effective improved by 13.7% compared to the two quarters preceding the order. In my analysis, this improvement is directly attributable to the fact that facilities-based carriers – in particular, WorldCom, Sprint, and Global Crossing – are now tracking and paying compensation on behalf of their switch-based reseller customers.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 3-10-2003

Rodger McDowall
Rodger McDowall

Exhibit 2

SPRINT CORPORATION, *et al.*,
Petitioners,
v.
FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

1. My name is Greg Brassfield, and I am over the age of 18.

Organization, Inc (“VSOI”) located in Irving, Texas. It is my responsibility to oversee the day-to-day management of costs associated with payphone compensation paid to interexchange carriers (“IXCs”). I have spent over 21 years in the telecommunications field. In the last four years, I have handled issues specific to payphone compensation. I have extensive background in financial reporting in my previous positions with GTE.

3. My group supports Verizon Long Distance (“VZLD”), a switched-based reseller (“SBR”), and helps manage its relationship with Interexchange Carriers (“IXCs”). VZLD has resold interexchange services provided by MCI WorldCom since 1996. On or about December 13, 2001, MCI WorldCom announced a revised “surcharge policy” to VZLD, pursuant to which MCI WorldCom would handle the payment of

payphone compensation for its reseller customers and included instructions for data file exchange. MCI WorldCom also sent a notice of revised SBR Procedures on February 21, 2002.

4. In order to adjust to MCI WorldCom's surcharge policy and its revised procedures, Verizon marshaled resources to meet its obligations under our revised reseller agreement. Specifically, members of my staff doubled the time that they worked on payphone compensation issues over a period of several months. In addition, we expended resources working with our suppliers and purchasing agents in modifying our contracts to reflect changes in compensation procedures. These transition expenses have already been made. If the rules and procedures were now to change, we would likely have to incur additional expenses to modify our processes so that we could fulfill those new obligations.

5. For calls made since December 2001, MCI WorldCom has been charging VZLD the per-call compensation rate of \$.24 per call plus a processing fee for calls made from payphones. Our payments to MCI WorldCom are made on an ongoing monthly basis. Our last payphone payment to MCI WorldCom was made in February 2003, for December activity. Our payment for January activity is now being processed. Both include payments for payphone compensation.

Dated: 3/10/03

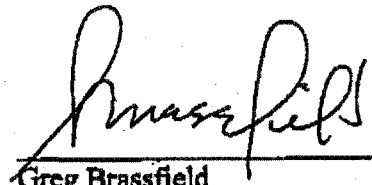

Greg Brassfield

Exhibit 3

December 13, 2001
Mailed Via Airborne Express



Dear Customer:

In order to facilitate compliance with the Third Order on Reconsideration in FCC Docket No. 96-128, released Nov. 21, 2001, MCI WORLDCOM Network Services, Inc. ("MCI") is implementing new payphone surcharge policies for all calls that originate from a payphone that are delivered for completion to a Facility Based Reseller ("FBR") (i.e., an entity that has its own switch/platform). Beginning December 1, 2001, if applicable, your invoice will show a payphone surcharge amount based on each call MCI originated from a payphone and delivered to your switch/platform. This amount may be subsequently reduced to correspond to the calls actually completed beyond the switch/platform to the dialed party (hereinafter referred to as the Payphone Reduction Amount" or "PRA").

The amount of the PRA, if any, will be determined following MCI's receipt of documentation (hereinafter referred to as "Incomplete Call Records") reflecting those payphone originated FBR calls that were not completed ("Incomplete Calls") beyond the switch/platform to the dialed party. Upon MCI's receipt of the Incomplete Call Records, the invoice amount will be reduced by the number of Incomplete Calls multiplied by the applicable payphone surcharge, currently \$.26. Exhibit I sets forth an Incomplete Payphone Call Summary form and Exhibit II sets forth the format and procedures which must be followed to submit Incomplete Call Records. **The Incomplete Payphone Call Summary AND the Incomplete Call Records must be submitted to MCI within 20 days following the end of each calendar month usage period.** MCI reserves the right to not accept Incomplete Call Records received 21 days after the end of the calendar month usage period.

MCI will rely on the Incomplete Call Records to accurately compensate the payphone service providers, therefore, customer hereby attests to the validity of the Incomplete Call Records submitted each month and agrees to maintain all such records for a minimum two (2) year period subject to an independent 3rd party audit. In connection therewith, the undersigned, on its own behalf and on behalf of its officers, directors, partners, employees, agents, shareholders, subsidiaries, predecessors, successors, affiliates and assigns, and partnerships and corporations acting in concert or participating with it, hereby releases and discharges fully and forever MCI, its officers, directors, partners, employees, agents, shareholders, subsidiaries, predecessors, successors, affiliates and assigns, individually and collectively, of and from any and all claims, demands, damages, causes of action, debts, obligations, liabilities or controversies of any kind whatsoever, whether at law or in equity, whether before a local, state or federal court, arbitrator or state or federal administrative agency or commission, that may arise against MCI regarding the compensation of payphone surcharges in any way related to the Customer's submission of Incomplete Call Records.

Customers may elect to forgo the submission of the Incomplete Payphone Call Summary and the Incomplete Call Records by selecting the Opt-In alternative in which case MCI will deem all calls delivered to the switch/ platform as completed, and the full payphone surcharge amount shown on the invoice will be due and payable. If Customer has no Facility Based Reseller call traffic with MCI, then please check the box indicating "Not Applicable".

MCI must receive a response from each Customer electing one of the three options (PRA, Opt-In, Not Applicable) within 14 calendar days or MCI reserves the option to begin blocking payphone originated calls and/or terminate the Agreement between MCI and Customer. To change the PRA, Opt-In or Not Applicable election, Customer must submit written notice, which will become effective the first day of the month following MCI's receipt of the notice.

Customer's Incomplete Call Records will be subject to verification at the discretion of MCI. In the event the Incomplete Call Records can not be appropriately verified MCI will adjust the PRA accordingly and Customer will be responsible for payment of the applicable payphone surcharges.

Check One ☐ PRA ☐ Opt-In (100%) ☐ Not Applicable

Customer _____

Authorized Representative (Name) _____

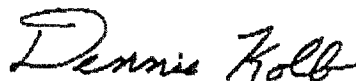
Signature _____

Date _____

Please ensure you have checked the appropriate selection above and forward this signed response via facsimile to:

MCI
Wholesale-Contract Management
Attn: Mandy Brock
Fax No:918-562-5311

Sincerely,



Dennis Kolb
Vice President, MCI Wholesale Marketing